IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6584 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

SIMARIYA BAROTHERS

Versus

SALES TAX OFFICER

Appearance:

1. Special Civil Application No. 6584 of 1987
MR RD PATHAK for Petitioner No. 1
MR MG DOSHIT for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 15/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Heard Mr RD Pathak learned advocate appearing for the petitioner and Mr Sudhir Mehta, learned AGP appearing on behalf of the respondents.

2. The issue involved in the present petition is similar to the issue involved in Special Civil Application No.6272 of 1987 so far as it relates to the sales made by the petitioner to M/s. Jalaram Trading Co. of Jamnagar.

3. There were also sales made by the petitioner to M/s. Puja Oil Traders amounting to Rs.27,018/-. Since the amount being very small, Mr RD Pathak, learned advocate appearing for the petitioner does not press the petitioner's challenge to the assessment made in respect of the sales made to M/s. Puja Oil Traders.

4. The challenge to the constitutional validity of Section 47(4A) of the Act is also not pressed by Mr RD Pathak in view of the order passed by this Court on 14-2-2002 by the Division Bench of this Court taking vires matters.

5. Here also the assessment year involved is S.Y. 2040 covering the period from 5-11-1983 to 24-10-1984 and the assessment order is passed by respondent No.1 on 19-10-1987.

6. Since the grounds of challenge to the levy of tax, penalty, interest etc. in the petition and the defence raised by the respondent - authorities in their affidavit in reply being the same, we need not go into the details of the matter.

7. For the reasons stated in our judgment of even date in Special Civil Application No.6272 of 1987, we are of the view that the petitioner is not liable to pay tax, penalty, interest etc. in respect of the sales made to M/s. Jalaram Trading Co. of Jamnagar. We, however, make it clear that this would not preclude the respondent authorities from recovering the amount of purchase tax on the purchases so made by M/s.Jalaram Trading Co. of Jamnagar from the petitioner. We also make it clear that the amount of interest levied from the petitioner be suitably modified so far as the sales other than the sales made to M/s. Jalaram Trading Co. of Jamnagar are concerned.

8. With the above observations, we allow this petition. Rule is made absolute to the aforesaid extent

with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-